

Translation

PATENT COOPERATION TREATY

PCT/EP2003/014153



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference N 7220/WM	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/014153	International filing date ( <i>day/month/year</i> ) 12 December 2003 (12.12.2003)	Priority date ( <i>day/month/year</i> ) 12 December 2002 (12.12.2002)
International Patent Classification (IPC) or national classification and IPC A61K 7/00		
Applicant NEUBOURG SKIN CARE GMBH & CO. KG		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 4 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 09 July 2004 (09.07.2004)	Date of completion of this report 17 March 2005 (17.03.2005)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/EP2003/014153

## I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

- ☐ the international application as originally filed.
- ☒ the description, pages 1-10, as originally filed,  
 pages \_\_\_\_\_, filed with the demand,  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_,  
 pages \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☒ the claims, Nos. \_\_\_\_\_, as originally filed,  
 Nos. \_\_\_\_\_, as amended under Article 19,  
 Nos. \_\_\_\_\_, filed with the demand,  
 Nos. 1-17, filed with the letter of 17 December 2004 (17.12.2004),  
 Nos. \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☐ the drawings, sheets/fig \_\_\_\_\_, as originally filed,  
 sheets/fig \_\_\_\_\_, filed with the demand,  
 sheets/fig \_\_\_\_\_, filed with the letter of \_\_\_\_\_,  
 sheets/fig \_\_\_\_\_, filed with the letter of \_\_\_\_\_.

2. The amendments have resulted in the cancellation of:

- ☐ the description, pages \_\_\_\_\_
- ☐ the claims, Nos. \_\_\_\_\_
- ☐ the drawings, sheets/fig \_\_\_\_\_

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

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## V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. Statement

Novelty (N)	Claims	1-8	YES
	Claims	9-17	NO
Inventive step (IS)	Claims	1-8	YES
	Claims	9-17	NO
Industrial applicability (IA)	Claims	1-17	YES
	Claims		NO

### 2. Citations and explanations

Reference is made to the following documents:

D1: FR-A-2 217 405

D2: WO-A-99/08649

D3: WO-A-98/31339.

#### 1. (PCT Article 33(2) and (3)).

1.1. None of the available documents discloses a method for the production of stable foaming creams as per claim 1.

There is no suggestion in the prior art that the stability of a foaming cream can be improved by heat treatment.

The subject matter of claim 1 and dependent claims 2-8 is novel and inventive in relation to the cited documents.

1.2. Product-by-process claims 9-17 must be interpreted in an absolute sense, that is, independently of the method, as being directed to the products *per se*.

Although it can be assumed that the heat treatment as per claim 1 results in a stable structure of the foaming creams (see the letter of reply of 17 December 2004, page 3, lines 8 to 11), claims 9-17 are nevertheless not novel, because they are not restricted to a foaming cream produced by the

method as per claims 1-8. Foaming creams of this nature are not novel in relation to documents D1 to D3:

D1 discloses foaming creams containing:

- a) lipophilic components ( $C_{10}$ - $C_{22}$  fatty acids (see D1, page 4, lines 16 to 21, page 8, line 1));
- b) hydrophilic components (triethanolamine, sorbitol (see D1, page 8, lines 11 to 15)); and
- c) propellant gas (isobutane (see D1, page 8, line 32)).

D1 also discloses a method for the production of foaming creams in which the foaming creams are subjected to heat treatment (see D1, page 8, lines 36 to 39).

Consequently, the subject matter of claims 9, 11-15 and 17 cannot be considered novel in relation to D1 (PCT Article 33(2)).

D2 discloses foaming creams containing:

- a) lipophilic components ( $C_{12}$ - $C_{22}$  fatty acids (page 5, last paragraph));
- b) hydrophilic components (propylene glycol, glycerin (page 4, lines 22 and 23, page 6, second paragraph)); and
- c) propellant gas (page 5, line 4, example 1).

Consequently, the subject matter of claims 9 and 12-17 cannot be considered novel in relation to D2 (PCT Article 33(2)).

D3 likewise discloses foaming creams containing: lipophilic and hydrophilic components (see page 4, second paragraph) and a propellant gas (page 14 to page 15, first paragraph; claims 1-8 and 11).

Consequently, the subject matter of claims 9 and 12-15 cannot be considered novel in relation to D3 (PCT Article 33(2)).

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2. (PCT Article 5).

Claim 10 falls outside the scope of claim 1, because the characterizing features of the heat treatment are different to the features specified in claim 1.